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06 UNITED STATES DISTRICT COURT
07 WESTERN DISTRICT OF WASHINGTON
08 AT SEATTLE

09 MATTHEW G. SILVA,) CASE NO. C04-1885-JLR-MAT
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12)
13 Plaintiff,)
14)
15)
16)
17 v.) ORDER RE: PLAINTIFF'S MOTIONS
18 LARRY MAYES, et al.,) FOR CONTEMPT, SANCTIONS AND
19) DEFAULT JUDGMENT, AND A
20 Defendants.)
21)
22)

23 Plaintiff submitted two motions for contempt (Dkt. 153), a motion for sanctions and
24 default judgment (Dkt. 156), and a motion for a continuance pursuant to Federal Rule of Civil
25 Procedure 56(f) (Dkt. 150). Defendants object to these motions. (Dkts. 175-77.) Having
reviewed the materials submitted by the parties, the Court hereby finds and ORDERS:

26 (1) Plaintiff asks the Court to hold King County in contempt for failing to forward
27 filing fees to the Court in accordance with 28 U.S.C. § 1915. He maintains that King County
28 Department of Adult and Juvenile Detention (DAJD) has a policy of refusing to collect and
forward filing fees in 42 U.S.C. § 1983 cases, pointing to their "Inmate Trust Fund Accounting"
policy and an account summary in support of this contention. (*See* Dkt. 191.) However, because
neither document supports the existence of such a policy, and plaintiff fails to provide any other
evidence in support of this contention, his motion for contempt citations regarding 28 U.S.C. §
1915 (Dkt. 153) is DENIED.

29 (2) Plaintiff also seeks a contempt citation relating to deposition procedures. He

01 maintains defendants have not conferred in good faith or cooperated in establishing a deposition
02 procedure in contravention of an order of this Court. He requests, *inter alia*, that the Court enter
03 an order requiring defendants to provide him with a notary public and tape recording equipment.
04 In response, defendants outline DAJD's deposition policy and assert plaintiff's failure to comply
05 with that policy. (See Dkt. 177; *see also* Dkts. 77 and 118 in *Silva v. Mayes*, No. C04-1484JCC.)

06 As described by defendants, in order to conduct a deposition, plaintiff must provide the
07 name of a court reporter and any attorney who will be attending the deposition to the Corrections
08 Program Administrator, and specify the material or equipment those persons wish to bring to the
09 jail. Identified individuals must provide information to facilitate a background check and any
10 materials brought must be pre-approved and removed at the completion of the deposition.
11 Deposition notices for jail staff must be sent to the DAJD attorney. Defendants assert that the use
12 of court reporters to record depositions in civil cases is nearly universal, and note that jail policy
13 prohibits inmates from possessing tape recorders based on security concerns. (*Id.*)

14 In an order dated February 25, 2005, the Court found similar requests from plaintiff
15 regarding deposition procedures premature and indicated that it expected the parties to confer in
16 good faith on this issue. (Dkt. 63.) The Court stated: "The parties are advised that the Court will
17 not order defendants to provide plaintiff with a notary public or tape recording equipment for
18 depositions unless there is no other feasible way for plaintiff to conduct depositions in this matter
19 in accordance with the applicable Federal Rules of Civil Procedure." (*Id.* at 4.)

20 The Court also addressed this issue in the matter of *Silva v. Mayes*, No. C04-1484JCC.
21 In a December 3, 2004 order, the Court declined plaintiff's request to compel defendants to allow
22 him to have a tape recorder for the purposes of taking depositions and to provide a notary public
23 to administer the oath for each deposition, stating that plaintiff had other available means to obtain
24 discovery from defendants. (*Id.*, Dkt. 88.) In an April 22, 2005 order, the Court noted that, while
25 plaintiff had not demonstrated he had the resources necessary to conduct depositions, he had
26 "other available means to obtain discovery from defendants." (*Id.*, Dkt. 157 at 1.) Finally, on

01 May 17, 2005, the Court adopted a Report and Recommendation which concluded plaintiff was
 02 not entitled to injunctive relief with respect to his requests that notary services be provided, and
 03 that he be allowed to store tape recording equipment in a legal materials box and permitted to
 04 access that equipment in order to take depositions. (*Id.*, Dkts. 149 & 172.) The Court noted that
 05 plaintiff had not yet demonstrated he was unable to obtain the necessary discovery in any other
 06 fashion. (*Id.*)

07 In this case, the Court finds no basis for plaintiff's motion for contempt in relation to
 08 deposition procedures. Plaintiff presents no evidence showing his compliance with DAJD's
 09 deposition policy. Instead, he presents the same requests the Court previously denied both in this
 10 case and in *Silva v. Mayes*, No. C04-1484JCC. Moreover, as in *Silva v. Mayes*, plaintiff fails to
 11 demonstrate he attempted to secure the discovery sought through other available means.¹
 12 Accordingly, plaintiff's motion for a contempt citation regarding deposition procedures (Dkt. 153)
 13 is DENIED.

14 (3) Plaintiff's motion for sanctions and default judgment alleges contempt of court,
 15 perjury, and abusive litigation practices. In particular, plaintiff points to alleged perjury by
 16 Roderick Dreyer and defendant Teri Hansen in declarations submitted to this Court, defendants'
 17 apparent failure to rebut these allegations of perjury in a King County Superior Court hearing, and
 18 different rationales for a jail rule given by defendant Bob Deneui.²

20 ¹ Given this failing, the Court finds no need to address plaintiff's bare assertion that
 21 defendants stole his money in order to avoid depositions in this matter.

22 ² Plaintiff also argues in his reply that default judgment is appropriate pursuant to Federal
 23 Rule of Civil Procedure 55 based on a failure to defend. (Dkt. 192.) He maintains that every
 24 declaration and certificate of service filed by defendants in this matter fails to comply with Federal
 25 Rule of Civil Procedure 5(d) (service and filing pleadings and other papers) and 28 U.S.C. § 1746
 26 (unsworn declarations under penalty of perjury). (See also Dkt. 129 (asserting objections to
 declarations from defendants on this same basis.)) The Court considers this argument waived
 based on plaintiff's failure to raise the issue in his motion. See, e.g., *Officers for Justice v. Civil
 Serv. Comm'n*, 979 F.2d 721, 725-26 (9th Cir. 1992) (declining to address arguments raised for
 the first time in a reply brief). (See also Dkt. 191 (raising a similar argument in the reply to
 defendants' opposition to plaintiff's motion for contempt.)) However, because it clearly lacks

01 “Courts have inherent equitable powers to dismiss actions or enter default judgments for
 02 failure to prosecute, contempt of court, or abusive litigation practices.” *TeleVideo Systems, Inc.*
 03 v. *Heidenthal*, 826 F.2d 915, 916-17 (9th Cir. 1987). Perjury entails the voluntary and intentional
 04 giving of testimony known to be false under oath about material matters. *In re Disciplinary*
 05 *Proceedings Against Huddleston*, 137 Wn.2d 560, 570, 974 P.2d 325 (1999) (citing 18 U.S.C.
 06 § 1621). Perjury could, in certain circumstances, qualify as a “willful deceit of the court”
 07 supporting entry of a default judgment. *See, e.g., TeleVideo Systems, Inc.*, 826 F.2d at 917
 08 (upholding default judgment where defendant admitted in a declaration filed on the day of trial that
 09 he had perjured himself in prior statements made under oath).

10 Here, the Court finds no basis for the entry of sanctions or default judgment. Plaintiff’s
 11 allegations of abusive litigation practices and contempt of court are no more than conclusory.
 12 Moreover, the materials pointed to in support of plaintiff’s specific allegations of perjury by
 13 Dreyer and Hansen (*see* Dkts. 77, 78, 119, 156 & 192 (citing various declarations and other
 14 pleadings)), do not suffice to establish that these individuals voluntarily and intentionally gave
 15 testimony known to be false under oath about material matters. Nor does defendants’ alleged
 16 failure to rebut those allegations in a state court hearing provide sufficient support for such a
 17 claim. Likewise, the mere fact that Deneui provided different rationales for a jail rule in a
 18 declaration and in a response to a grievance (*see* Dkt. 97 & Ex. 1 to Dkt. 156) does not constitute
 19 perjury, or otherwise demonstrate a willful deceit of court. For these reasons, plaintiff’s motion
 20 for sanctions and default judgment (Dkt. 156) is DENIED.

21 (4) In response to defendants’ motion for summary judgment and dismissal, plaintiff
 22 filed a motion for continuance pursuant to Federal Rule of Civil Procedure 56(f). He seeks an
 23 additional ninety days to allow for a response to a second set of discovery requests, as well as
 24 possible follow-up requests, and for the completion of depositions. In support of his request,
 25 plaintiff again alleges a failure of defendants to confer in good faith as to the establishment of a

26 merit, the Court also forewarns plaintiff against bringing forth this argument in the future.

01 procedure for conducting depositions.

02 Rule 56(f) permits a party to request a continuance to conduct further discovery in order
03 to obtain evidence to oppose a summary judgment motion. The rule provides:

04 Should it appear from the affidavits of a party opposing the motion that the party
05 cannot for reasons stated present by affidavit facts essential to justify the party's
06 opposition, the court may refuse the application for judgment or may order a
07 continuance to permit affidavits to be obtained or depositions to be taken or discovery
08 to be had or may make such other order as is just.

09 Fed. R. Civ. P. 56(f). Summary dismissal is generally disfavored "where relevant evidence remains
10 to be discovered." *Klingele v. Eikenberry*, 849 F.2d 409, 412 (9th Cir. 1988). However, a party
11 opposing a summary judgment motion must "show that additional discovery would uncover
12 specific facts which would preclude summary judgment." *Maljack Prods., Inc. v. GoodTimes*
13 *Home Video Corp.*, 81 F.3d 881, 888 (9th Cir. 1996). Also, a Rule 56(f) request may be denied
14 if the party requesting a continuance did not seek discovery diligently. *See Mackey v. Pioneer*
15 *Nat'l Bank*, 867 F.2d 520, 523-24 (9th Cir. 1989) (upholding refusal of Rule 56(f) request where
16 movant had been granted an additional month to conduct discovery).

17 Defendants note that this is plaintiff's second request for a discovery continuance, and
18 assert his lack of diligence, pointing to his failure to follow DAJD's deposition policy and the
19 untimely submission of his second set of discovery requests. Defendants also assert that plaintiff
makes no showing of what information he seeks through depositions, or how such information will
preclude summary judgment.

20 By order dated April 22, 2005, the Court granted plaintiff a thirty-day extension of the
21 discovery deadline in this case. (Dkt. 99.) The Court indicated that that order was "without
22 prejudice to the parties to seek a further continuance of case deadlines as warranted." (*Id.* at 2.)
23 The Court questions whether plaintiff diligently pursued discovery either within the original time
24 frame established for discovery or within the additional time period granted. The Court also notes
25 that plaintiff's motion for a continuance does fail to specify what specific facts precluding summary
26 judgment additional discovery would yield. Nonetheless, the Court finds one additional discovery

01 extension appropriate in this case.

02 However, in granting this continuance, the Court stresses the following. First, the Court
 03 again finds no basis for ordering defendants to provide plaintiff with a notary public or tape
 04 recording equipment for depositions. As repeatedly explained in *Silva v. Mayes*, No. C04-
 05 1484JCC, plaintiff has other available means to obtain discovery from defendants. Second, no
 06 additional extensions of the discovery deadline will be granted in this case. All discovery,
 07 including any “follow-up requests,” must be completed by the final discovery deadline established
 08 by this order. Finally, the Court finds a thirty-day extension, rather than the ninety days requested
 09 by plaintiff, a sufficient period of time in which to complete discovery.

10 In sum, plaintiff’s motion for a continuance (Dkt. 150) is GRANTED in part. The
 11 discovery deadline in this case is extended as indicated below.

12 (5) The Court also finds supplemental briefing from defendants necessary in order to
 13 properly consider plaintiff’s pending motion for partial summary judgment. The supplemental
 14 briefing should total no more than **ten (10)** pages and should address the following:

- 15 (a) The proper analysis to apply to pretrial detainees in considering whether
 the state law at issue in plaintiff’s motion for partial summary judgment
 creates a liberty interest; and
- 16 (b) Whether Washington Administrative Code Title 289 continues to have
 legal effect.

20 In addressing these issues, defendants should take into consideration all arguments raised in
 21 plaintiff’s motion and reply in support of partial summary judgment. (See Dkts. 81 & 101.)
 22 Defendants should submit this supplemental briefing, and plaintiff may submit a supplemental reply
 23 totaling no more than **five (5)** pages, in accordance with the deadlines indicated below.

24 (6) The deadlines and noting dates previously set in this case are hereby extended as
 25 follows:

26 * All discovery shall be completed by **September 30, 2005**.

- * Any opposition to defendants' motion for summary judgment and dismissal must be filed on or before **October 31, 2005**, and defendants may file a reply on or before **November 4, 2005**.
 - * Defendants must submit the supplemental briefing requested above on or before **October 31, 2005**, and plaintiff may file a supplemental reply on or before **November 4, 2005**.
 - * Defendants' motion for summary judgment and dismissal (Dkt. 137) and plaintiff's motion for partial summary judgment (Dkt. 81) are hereby RENOTED for consideration on **November 4, 2005**.
 - * Counsel for defendants and plaintiff are directed to confer and provide the Court with a joint pretrial statement by no later than **February 3, 2006**.

(7) The Clerk is directed to send copies of this Order to plaintiff, to counsel for defendants, and to the Hon. James L. Robart.

DATED this 31st day of August, 2005.



Mary Alice Theiler
United States Magistrate Judge